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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR JESUS LAGUNAS,

Defendant and Appellant.

G039860

(Super. Ct. No. 06CF3829)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
William R. Froeberg, Judge. Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton, Alana
Cohen Butler and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and
Respondent.

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INTRODUCTION

Defendant Victor Jesus Lagunas appeals from a judgment of conviction for first degree murder and active participation in a criminal street gang. Defendant raises one issue on appeal—whether the trial court erred in admitting statements he made during a police interview, after, defendant contends, he asserted his constitutional right to remain silent. Having reviewed the transcript of defendant’s police interview, we conclude he did not unequivocally exercise his right to remain silent, and we therefore affirm.

STATEMENT OF FACTS

A. The Crime

On October 23, 2006, at approximately 7:30 p.m., Benjamin Lopez was talking with Emeterio Adame, while on the sidewalk in front of Adame’s house. Adame’s house was in an area of Santa Ana which the Alley Boys street gang claimed as its “territory.” Lopez was a member of the Alley Boys gang at that time. Lopez heard gunshots and saw muzzle flashes coming from behind Adame. Lopez saw Adame fall to the ground. Adame died later of a gunshot wound.

B. Defendant is Interviewed by the Police

Defendant was arrested in connection with a separate incident, and interviewed by Santa Ana Police Officers Rodriguez and Rondou on November 29, 2006. Before questioning, Officer Rodriguez advised defendant of his constitutional rights, including the right to remain silent. Both officers asked defendant if he understood his rights, and Officer Rondou asked if defendant had any questions. Defendant acknowledged understanding his rights, and shook his head, indicating he had no questions.

At one point during the interview, the following exchange occurred between the officers and defendant.

“RODRIGUEZ: Well, if that’s the case, Victor, then we have a problem because either you’re lying or other people are lying and, either way, it’s bad for you.

“LAGUNAS: Yeah.

“RODRIGUEZ: Because if you’re saying you saw Sergio 3 months ago and people are telling us something different, then that kind of puts us in a bad spot. Don’t you think?

“LAGUNAS: I seen him like 3 months ago.

“RODRIGUEZ: Why would people be telling us stuff about you?

“LAGUNAS: I don’t know.

“RODRIGUEZ: You sure?

“LAGUNAS: Positive.

“RODRIGUEZ: Some stuff happened recently in the last, maybe what, 2 months. There was an incident down there close to your neighborhood where somebody got hurt and a bunch of witnesses, d[ur]ing this investigation. You know, we show ‘em pictures, we talk to a lot of people, we talk to Sergio, as a matter of fact, and here we are talking to you. *Anything you want to say about that?*

“LAGUNAS: *No.*

“RONDOU: Do you know where Sergio is, man?

“LAGUNAS: No.

“RONDOU: You don’t know where he is right now? You sure?

“LAGUNAS: Yeah.

“RONDOU: You have no idea where Sergio is?

“LAGUNAS: I don’t know[.]

“RONDOU: No idea.

“RODRIGUEZ: No one’s told you?

“LAGUNAS: No.

“RONDOU: He’s at the County jail, man.

“RODRIGUEZ: He’s been locked up for a while.

“RONDOU: And we talked to him. So what Mr. Rodriguez is telling you is there’s a lot of people that he’s talked to on this. And sometimes, man, sometimes people like to point the finger at people, say they did something that they maybe didn’t do to get themselves out of trouble. You know what I’m saying?

“LAGUNAS: Yeah.” (*Italics added.*)

As the interview continued, defendant initially denied any involvement in the shooting, but later admitted being present when a gang member nicknamed “Termite” shot Adame. Defendant also admitted to being a member of the TPV street gang.

PROCEDURAL HISTORY

An information, filed on February 22, 2007, charged defendant with murder (Pen. Code, § 187, subd. (a)) and active participation in a criminal street gang (*id.*, § 186.22, subd. (a)).¹ The information included enhancements under Penal Code sections 12022.53, subdivisions (d) and (e)(1), and 186.22, subdivision (b)(1). Defendant’s pretrial motion to exclude his statements made after replying “[n]o” to the question “[a]nything you want to say about that?” was denied.

A jury found convicted defendant of both counts, and found the enhancement allegations true and that the homicide was first degree murder. The trial court imposed a prison term of 16 months, to be followed by a consecutive term of 50 years to life.²

¹ Two additional counts – one for aggravated assault and one for active gang participation in connection with a different incident – were dismissed before trial.

² The trial court sentenced defendant to 25 years to life for murder, with a consecutive sentence of 25 years to life for the Penal Code section 12022.53 enhancement, and a consecutive sentence of 16 months for active gang participation. The court struck the section 186.22, subdivision (b)(1) enhancement for purposes of sentencing only.

DISCUSSION

Before trial, defendant moved to exclude evidence of his postarrest statements. Defendant argued he had invoked his right to remain silent under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*) and his postarrest statements were therefore obtained in violation of his rights under the Fifth Amendment to the United States Constitution.

The trial court held a hearing on defendant's motion pursuant to Evidence Code section 402. Officer Rondou and defendant testified, and a copy of the transcript of the interview was admitted. The trial court explained its ruling as follows: "The question then is whether or not there has been an unequivocal exercise of the right to cease questioning. [¶] There's a somewhat similar circumstance in . . . a case called *People versus Musselwhite*, which is at 17 Cal 4th, 1216. At page 1238 the defendant says, 'I don't want to talk about this' during the course of an interview. The Supreme Court in that case determined that the exercise of the right to stop questioning depends on the context. They found that statement to not be an unequivocal exercise of the right to stop questioning. [¶] There are also other cases where defendants are allowed to pick and choose what questions they wish to answer. It is rather clear from the transcript that Mr. Lagunas did not unequivocally exercise his right to cease the interview. He was asked one question, 'anything you want to say about that?' [¶] He said, 'no.' And then continued on for the better part of 50 pages during the interview. [¶] So I don't find that there is any unequivocal [exercise of the] right to cease questioning. It was merely his statement that he didn't want to say anything voluntarily about that incident, which does not rise to the level of express invocation. The motion to exclude is denied."

In *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238, our Supreme Court explained: "[P]olice officers must cease questioning a suspect who exercises the right to cut off the interrogation. 'If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.'

[Citation.] ‘Whether the suspect has indeed invoked that right, however, is a question of fact to be decided in the light of all the circumstances’ [Citation.] We have also said that “[a] desire to halt the interrogation may be indicated in a variety of ways,” [citation] and that the words used “‘must be construed in context.’” [Citation.]”

We give “considerable weight” to the trial court’s findings. (*People v. Musselwhite, supra*, 17 Cal.4th at p. 1239.) “In considering a claim that a statement or confession is inadmissible because it was obtained in violation of a defendant’s rights under *Miranda* [*v.*] *Arizona, supra*, 384 U.S. 436, we accept the trial court’s resolution of disputed facts and inferences, and its evaluation of credibility, if supported by substantial evidence. [Citation.] Although we independently determine whether, from the undisputed facts and those properly found by the trial court, the challenged statements were illegally obtained [citation], we “‘give great weight to the considered conclusions” of a lower court that has previously reviewed the same evidence.’ [Citations.]” (*People v. Wash* (1993) 6 Cal.4th 215, 235-236.)

We agree with the trial court’s conclusion that defendant did not invoke his right to remain silent during his interview with Officers Rodriguez and Rondou.

In *People v. Musselwhite, supra*, 17 Cal.4th at page 1238, a police detective was trying to determine whether, on the day of the murder, the defendant had been at an apartment complex where the victim’s body was found. At one point during the interview, the detective said, “. . . Okay, we’re talking deadly serious stuff here partner. We’re through, we’re through bantering around. We’re going to have to get down to the facts. Okay. The fact of the matter is, you’re going to have to think very clearly right now. You got to think what’s best for me. Am I in a bind or what. Now what do these guys know and what don’t they know. If they got enough to do me, what’s my best thing to do. What’s best for me.” (*Id.* at pp. 1238-1239.) The defendant replied, “‘I don’t know what you, *I don’t want to talk about this*. You all are getting me confused. (inaudible) I don’t even know what you’re all talking about. You’re getting[,] you’re

making me nervous here telling me I done something I ain't done. Kill somebody, come on, give me a break.' (Italics added.)" (*Id.* at p. 1239.) The California Supreme Court concluded the defendant's statement was "something less or other than" an attempt to invoke his right under *Miranda* to remain silent. (*People v. Musselwhite, supra*, at pp. 1239-1240.) We find no discernable difference between the statements of the defendant in *Musselwhite* and defendant in the present case.

Similarly, in *People v. Silva* (1988) 45 Cal.3d 604, 629, on which *People v. Musselwhite* relied, the defendant answered several questions during a police interview after waiving his *Miranda* rights, and then replied, "I don't know" when asked if he had been driving a truck involved in a double murder. The police officer again asked the defendant if he had been driving the truck, and the defendant said, "I don't know. I really don't want to talk about that." (*People v. Silva, supra*, at p. 629.) The Supreme Court rejected the defendant's argument that his statements constituted an invocation of his right to remain silent. "Having obtained defendant's consent to the questioning, [the sheriff] was free to interview defendant until he exercised his privilege against self-incrimination. [Citation.] A suspect may do so by 'refus[ing] to sign a waiver of his constitutional rights[,] . . . refus[ing] to continue an interrogation already in progress[,] or . . . [by] ask[ing] for an attorney.' [Citation.] A defendant may indicate an unwillingness to discuss certain subjects without manifesting a desire to terminate 'an interrogation already in progress.' [Citation.] [¶] Here, the trial court listened to the tape recording and found that '[I]n this case . . . [defendant] does not claim that he had invoked his constitutional rights directly, but indirectly. *And if you listen to the portion of the tape to which I listened, it is clear from the inflection that he was not even intimating that he wished to terminate the interrogation* when he said, "I don't know, I really don't want to talk about that."' In light of the court's finding and our independent review of the tape recording, we find these statements were admissible and were not obtained in violation of his *Miranda* rights. [Citation.]" (*Id.* at pp. 629--630.) Here, too, having read the

transcript of defendant's interview with Officers Rondou and Rodriguez, we conclude defendant indicated an unwillingness to discuss certain subjects, but did not manifest a desire to terminate the interview.

The cases cited by defendant are distinguishable. In *People v. Marshall* (1974) 41 Cal.App.3d 129, 131, the defendant was questioned by a police officer regarding the murder of the defendant's stepfather. During the questioning, the following colloquy occurred between the police officer and the defendant: "'Q. Okay. Well, like I told you, Frederick, we've talked to a lot of people, and when something like this happens, whether it be inside the family or not, eventually the truth comes out, and we know the truth. So there's a lot of what you told us is true, but there's an awful lot that you left out. *So do you want to go back over the parts you left out?* [Italics added.] A. No. Q. Huh? Beg your pardon? A. No. Q. Why? A. I just don't want to.'" (*Id.* at p. 132, brackets in original.) The questioning continued and the defendant ultimately confessed to murdering his stepfather. (*Ibid.*) The appellate court determined the defendant had unequivocally asserted his right to remain silent, rendering the remainder of his statements a violation of *Miranda*. "[H]ere there is no need to engage in speculation as to whether defendant's words or conduct 'reasonably appears inconsistent with a present willingness on [his] part . . . to discuss his case freely and completely with police *at that time*' [citations]. . . . [H]ere there is an unequivocal 'No,' not once but twice, and further confirmation thereof by the answer, 'I just don't want to.' This express assertion clearly shows an outright unwillingness of defendant *at that time* to go back over the parts he left out concerning the day of the homicide (which parts obviously incriminated him and later constituted his confession) and that he intended to exercise his Fifth Amendment privilege. Is there more defendant must say to invoke his privilege to remain silent than 'No' when asked to explain or clarify or continue the conversation? Under the foregoing authorities he is not required to use any particular language to indicate his unwillingness at that time to discuss his case or to give any explanation

or reason for refusing to continue with the interrogation.” (*People v. Marshall, supra*, at pp. 133-134.) *People v. Marshall* is distinguishable from the present case because defendant here did not expressly refuse to continue talking to the police. In this case, defendant’s statement showed an unwillingness to discuss an issue or issues, not an unwillingness to continue the interview in its entirety.

Defendant also relies on *People v. Peracchi* (2001) 86 Cal.App.4th 353. After being read his *Miranda* rights, the defendant in that case was questioned as follows.

““Having those rights in mind, do you want to talk to us now about the charges you’re being arrested [*sic*]?”

““At this point, I don’t think so. At this point, I don’t think I can talk.”

““Q Why is that?”

““I just feel like my mind is not clear enough to discuss this. My mind is not clear enough right now. I need to be able I think. Right now isn’t a good time.”

““Q Okay. And you’re saying the reason is because—”

““A Uh—somethin’g—uh, I guess I don’t want to discuss it right now. I guess I want—”

““Q You want what?”

““I don’t want to discuss it right now.”

““Q Is it because you’re too tired?”

““Not really. To be honest with you, not really. I mean, I’ll give—I—I’ll give you a little rundown maybe, but it’s not going to be—go too deep about—that’s what you want. It’s not going—I didn’t stop and that was it. Do you know what I mean?”

““Q Why didn’t—”

““I lost control.” [¶] . . . [¶]” (*People v. Peracchi, supra*, 86 Cal.App.4th at pp. 358-359.)

The appellate court determined that the defendant had invoked the right to remain silent, a fact supported by the nature of the police officer's follow-up questions. "Although his initial statements to the officer regarding whether he was willing to waive his rights may have been ambiguous ('I don't think so. At this point, I don't think I can talk,' 'I need to be able I think,' 'I guess I don't want to discuss it right now'), his intent to remain silent became clear through further questioning. Ultimately, Peracchi stated, 'I don't want to discuss it right now,' clearly indicating that he intended to invoke his right to remain silent. Indeed, the officer's questions assumed that appellant did not wish to speak with them then and the questions focused solely on the reason why he did not want to do so. Unlike the cases respondent relied upon, the questions here were not directed at whether Peracchi was invoking his right to silence nor were they clarifying whether he understood his rights. Instead, the questions asked why he did not wish to waive his rights. This inquiry itself assumes that Peracchi had invoked his right to remain silent. Officers have no legitimate need or reason to inquire into the reasons why a suspect wishes to remain silent." (*People v. Peracchi, supra*, 86 Cal.App.4th at p. 361.)

Similarly, in *People v. Carey* (1986) 183 Cal.App.3d 99, the defendant invoked his right to remain silent four times immediately after being read his rights.

"DETECTIVE SHARPE: 'Having these rights in mind, do you wish to talk to me now?'

"APPELLANT: 'I ain't got nothin' to say.'

"DETECTIVE SHARPE: 'Is that, you don't know what to say or you'll answer some questions of mine?'

"APPELLANT: 'I ain't got nothin' to say at all.'

"DETECTIVE SHARPE: 'I don't understand, I mean, saying you have nothing to say.'

"APPELLANT: 'I ain't got nothin' to say, nothin', nothin'.'

"DETECTIVE SHARPE: 'You don't want to say anything?'

“APPELLANT: ‘I ain’t got nothin’ to say.’

“DETECTIVE SHARPE: ‘How about if I asked you questions? Would you have some response to those?’

“APPELLANT: ‘It all depends on the questions.’

“DETECTIVE SHARPE: ‘Okay, then why don’t you answer the questions you can and the ones you can’t, alright? [Sic.]’” (*People v. Carey, supra*, 183 Cal.App.3d at pp. 103-104.)

Under those circumstances, the appellate court had no difficulty determining the defendant’s statements made in response to further questioning by the police must be excluded.

In contrast to *People v. Peracchi* and *People v. Carey*, defendant here did not unequivocally invoke his right to remain silent immediately after being read his rights, nor did he state a desire not to answer any further questions. Rather, he answered questions before responding “no” to a single question, after which he responded to all further questions.

In *People v. Porter* (1990) 221 Cal.App.3d 1213, 1216, the defendant was interviewed in jail in Oregon. After being read his rights under *Miranda*, the defendant indicated he understood those rights and wished to talk to the detectives. (*People v. Porter, supra*, at p. 1217.) In response to a detective’s question, the defendant admitted, “‘I know about the burglary, but I’m not gonna say any more than that.’” (*Ibid.*) The detectives continued to question the defendant. When the detectives confirmed the defendant would be extradited to California on burglary and auto theft charges, he said, “‘[o]kay, well I think I’ll just save it for when I get there and . . . ‘cause I wanna decide what I want to do.’” (*Ibid.*) Again, the detectives’ questioning continued, and the defendant ultimately confessed to auto theft and burglary. (*Ibid.*) The appellate court held the confession was inadmissible. The court concluded the first statement, “‘but I’m not gonna say any more than that,’” could mean either he would talk only about the car

theft, but not the burglary, or that he wanted to end the interrogation completely. (*Id.* at p. 1218.) By the second statement, “‘I’ll just save it for when I get there’” (*id.* at p. 1217), the defendant “was arguably saying he did not want to discuss the case freely and completely at that time” (*id.* at p. 1218). Although both statements were somewhat ambiguous, the court was compelled to resolve any ambiguity in favor of the defendant. (*Id.* at pp. 1218-1219.)

Here, we find no such ambiguity. As noted, *ante*, defendant indicated an unwillingness to answer one question posed by the interviewing officer. Even if there was any ambiguity as to whether defendant wished to invoke his right to remain silent at that time, his response to the very next question posed by the officer showed he was not invoking his right to remain silent.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O’LEARY, J.